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INFO OCT-01 EUR-12 EA-07 ISO-00 JUSE-00 L-03 FTC-01 SEC-01
CIAE-00 COME-00 DODE-00 DOTE-00 FMC-01 INR-07 NSAE-00
SAL-01 CG-00 DLOS-06 OES-06 PM-04 H-01 NSC-05 PA-01
PRS-01 SP-02 SS-15 USIA-06 AID-05 CEA-01 FRB-03 IO-13
NEA-10 OPIC-03 TRSE-00 CIEP-01 LAB-04 SIL-01 AGRE-00
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AMEMBASSY STOCKHOLM PRIORITY

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AMCONSUL HAMBURG PRIORITY

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AMEMBASSY TOKYO

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SUBJECT: DEPARTMENT OF JUSTICE STUDY OF REGULATED OCEAN
SHIPPING

1. JANUARY 17 JOURNAL OF COMMERCE REPORTED RELEASE OF
JUSTICE DEPARTMENT STUDY OF OCEAN SHIPPING INDUSTRY. STUDY
WAS INITIATED BY AN INTERAGENCY TASK FORCE CHAIRED BY

COUNCIL OF ECONOMIC ADVISORS UNDER AUSPICES OF ECONOMIC POLICY BOARD. ALTHOUGH APPROVED BY ASSISTANT ATTORNEY GENERAL OF DOJ ANTITRUST DIVISION, DOCUMENT RELEASED IS NOT TASK FORCE DOCUMENT. JUSTICE HAS FORWARDED ITS DRAFT TO TASK FORCE FOR COMMENT AND HAS RELEASED IT TO PUBLIC WITH AIM OF STIMULATING DEBATE AND RECEIVING COMMENTARY/ INFORMATION FROM OUTSIDE USG. FOLLOWING IS SUMMARY OF STUDY'S CONCLUSIONS AND RECOMMENDATIONS, AND COMMENTS ON POSSIBLE IMPLICATIONS.

2. AFTER EXTENSIVE ANALYTICAL EFFORT, STUDY CONCLUDES THAT CONTRARY TO THE EXPECTATION OF CONGRESS WHEN IT ENACTED SHIPPING ACT OF 1916, POWER OF STEAMSHIP CONFERENCES IS NOT EFFECTIVELY CONSTRAINED BY MARKET FORCES OR BY REGULATION. ON CONTRARY, EXISTING REGULATORY SYSTEM MAY HAVE PROMOTED, RATHER THAN HINDERED, CARTELIZATION OF THIS INDUSTRY. STUDY ARGUES THAT COMPETITIVE SHIPPING INDUSTRY

COULD SUPPLY SAME BENEFITS ONCE THOUGHT ACHIEVABLE ONLY UNDER CONFERENCE SYSTEM AND COULD DO SO IN MORE EFFICIENT AND LESS COSTLY MANNER.

3. STUDY MAKES FEW FIRM RECOMMENDATIONS FOR RESTORING COMPETITION TO SHIPPING BUT DOES OUTLINE QUOTE POSSIBLE REMEDIES UNQUOTE WHICH RANGE FROM REPEAL OF ACT TO RELATIVELY MINOR MODIFICATIONS OF ACT.

A. FROM DOMESTIC POINT OF VIEW, STUDY SUGGESTS REPEAL OF ACT COULD BE MOST ADVANTAGEOUS SOLUTION. REPEAL WOULD LIMITED OFFICIAL USE

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HAVE THE EFFECT OF MAKING ANTITRUST LAWS FULLY APPLICABLE TO SHIPPING AND THUS WOULD FORBID CONTINUANCE OF CONFERENCES AND OTHER RATE-SETTING AGREEMENTS IN U.S. TRADES. STUDY ARGUES THIS CHANGE WOULD GIVE SHIPPERS A WIDER RANGE OF CHOICES THAN IS CURRENTLY AVAILABLE AND WOULD FORCE LINES TO ELIMINATE INEFFICIENCIES. HOWEVER, STUDY RECOGNIZES STRONG SUPPORT OTHER GOVERNMENTS GIVE TO CONFERENCE SYSTEM, AND THAT REPEAL COULD CAUSE QUOTE GRAVE UNQUOTE INTERNATIONAL DIFFICULTIES.

B. AS ALTERNATIVES TO REPEAL, JUSTICE EXPLORES A RANGE OF MODIFICATIONS TO ACT. IN THIS SECTION STUDY RECOMMENDS THAT:

(1) POOLING AGREEMENTS SHOULD BE PROHIBITED ALTOGETHER. (STUDY CONTENDS THESE ELIMINATE ANY INCENTIVE FOR CONFERENCE LINES TO COMPETE AGAINST ONE ANOTHER.)

(2) ACT (SECTION 15) SHOULD REQUIRE THAT ALL RATEMAKING

AGREEMENTS, INCLUDING CONFERENCES, PERMIT THEIR SIGNERS TO ENGAGE IN INDEPENDENT ACTION. (CURRENTLY ACT REQUIRES THIS ONLY OF AGREEMENTS BETWEEN CONFERENCES OR LINES IN DIFFERENT CONFERENCES.)

(3) DUAL RATE CONTRACTS, IF NOT BARRED ALTOGETHER (SEE BELOW) SHOULD NOT BE ALLOWED TO EXTEND TO INTERMODAL SHIPMENTS. (WHETHER EXISTING LAW AUTHORIZES SUCH EXTENSIONS IS CURRENTLY IN DISPUTE.)

C. IN ADDITION TO ABOVE RECOMMENDATIONS, STUDY DISCUSSES, MORE TENTATIVELY, NUMBER OF OTHER MODIFICATIONS OF SHIPPING ACT TO INCREASE COMPETITIVENESS:

(1) REPEAL THOSE SECTIONS OF ACT WHICH SANCTION DUAL RATE CONTRACTS, THEREBY INCREASING THE POOL OF CARGO AVAILABLE TO INDEPENDENTS.
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(2) IF DUAL RATE CONTRACTS ARE RETAINED, REDUCE PENALTY TO SHIPPER OF BREACHING SUCH CONTRACTS, REDUCE REQUIRED NOTICE FOR WITHDRAWAL FROM 90 TO 15 OR 30 DAYS, AND REDUCE MAXIMUM ALLOWABLE SPREAD BETWEEN CONTRACT AND NONCONTRACT RATES FROM 15 TO 10 PERCENT.

(3) REQUIRE A QUOTE COMPETITIVE IMPACT STANDARD UNQUOTE FOR ANY AGREEMENT SUBMITTED TO FMC FOR APPROVAL. UNDER THE STANDARD, PROPONENTS OF AN AGREEMENT WOULD BE REQUIRED TO PROVE THAT ANTI-COMPETITIVE EFFECTS ARE CLEARLY OUTWEIGHED BY SUBSTANTIAL PUBLIC BENEFITS OR TRANSPORTATION NEEDS.

(4) ALL DUAL RATE CONTRACTS AND ANTI-COMPETITIVE AGREEMENTS APPROVED BY FMC COULD BE REQUIRED TO EXPIRE PERIODICALLY. LINES AND CONFERENCES UNABLE TO JUSTIFY CONTINUATION UNDER CURRENT ECONOMIC CONDITIONS WOULD BE REQUIRED TO DISCONTINUE THE ARRANGEMENTS.

(5) RATE AGREEMENTS BETWEEN CONFERENCES AND NON-CONFERENCE LINES COULD BE PROHIBITED, THUS ALLOWING NONCONFERENCE LINES TO CONSTRAIN CONFERENCE POWER MORE EFFECTIVELY.

(6) THE SECTION OF THE ACT PERMITTING INTERCONFERENCE AGREEMENTS COULD BE REPEALED. AS RESULT OF GROWTH OF INTERMODALISM, SOME CONFERENCES HAVE BECOME COMPETITIVE WITH ONE ANOTHER, AND INTERCONFERENCE AGREEMENTS ENABLE THEM TO ELIMINATE SUCH COMPETITION.

4. COMMENT. AS A PRACTICAL MATTER, IT SEEMS DOUBTFUL THAT MANY, IF ANY, OF STUDY'S RECOMMENDATIONS WILL BE

ENACTED IN NEAR FUTURE. PUBLICATION, HOWEVER, IS CERTAIN TO HAVE PSYCHOLOGICAL IMPACT, PARTICULARLY ON THOSE EUROPEAN NATIONS WHOSE LINES ARE INVOLVED IN JUSTICE'S ANTITRUST INVESTIGATION. THESE NATIONS MAY NOTE THAT STUDY PREPARED BY SAME SECTION OF JUSTICE (REGULATED LIMITED OFFICIAL USE

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INDUSTRIES) AS IS CARRYING OUT INVESTIGATION, DESPITE SEPARATE ORIGINS OF REPORT AND INVESTIGATION.

5. FACT THAT STUDY IN CONSIDERING FMC'S POLICING ROLE DISCUSSES AT SOME LENGTH (ALBEIT CITING ONLY INFORMATION IN PUBLIC RECORD) ALLEGED UNAUTHORIZED NORTH ATLANTIC QUOTE SUPERCONFERENCE UNQUOTE -- WHICH IS UNDERSTOOD TO BE SUBJECT OF GRAND JURY INVESTIGATION -- WILL NOT ALLAY ANY SUSPICIONS EUROPEANS HAVE ABOUT U.S. MOTIVES WITH REGARD TO FUTURE OF CONFERENCE SYSTEM, DESPITE OUR REPEATED ASSURANCES TO SIX NATIONS CONCERNED THAT INVESTIGATION IS NOT AN ATTACK ON CONFERENCE SYSTEM. (JUSTICE NOTES THAT SECTION ON THE QUOTE SUPERCONFERENCE UNQUOTE WAS INCLUDED FOR PURPOSE OF EXAMINING A KEY CONGRESSIONAL ASSUMPTION WHEN SHIPPING ACT ENACTED -- I.E., THAT A REGULATORY AGENCY COULD EFFECTIVELY ENFORCE DISCLOSURE OF ALL AGREEMENTS WHICH MIGHT IMPACT ON COMPETITION.)

6. HOPEFULLY, EUROPEANS WILL REACT BY CONCLUDING THAT SINCE CONFERENCES APPARENTLY IN BAD REPUTE, THEY SHOULD DEMONSTRATE INTEREST IN CLEANING UP SYSTEM BY ADOPTING COOPERATIVE POSTURE. HOWEVER, WE CANNOT RULE OUT POSSIBILITY THAT THEY WILL CONCLUDE STUDY REFLECTS U.S. BIAS AGAINST CONFERENCES, AND THAT BEST HOPE IS FOR QUOTE DIPLOMATIC SOLUTION UNQUOTE. ADDRESSEES

REQUESTED REPORT PROMPTLY ANY HOST GOVERNMENT APPROACH OR EXPRESSION OF VIEWS ON EITHER STUDY OR NEXT STEPS IN ANTITRUST INVESTIGATION.

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